

**NATURAL RESOURCES COMMISSION**

January 15, 2013 Meeting Minutes

**MEMBERS PRESENT**

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Robert Carter, Jr., Secretary  
Donald Ruch  
Troy Woodruff  
Thomas Easterly  
Phil French  
Patrick Early  
Doug Grant  
Robert Wright

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sandra Jensen  
Debra Freije

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

John Davis	Executive Office
Cheryl Hampton	Executive Office
Phil Bloom	Communications
Scotty Wilson	Law Enforcement
Dan Bortner	State Parks and Reservoirs
William Walker	State Parks and Reservoirs
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Chad Stewart	Fish and Wildlife
James Kershaw	Fish and Wildlife
Mark Reiter	Fish and Wildlife
Dan Eckstein	Fish and Wildlife
Bill James	Fish and Wildlife
Matt O'Neill	Fish and Wildlife
John Bacone	Nature Preserves
Phil Marshall	Entomology

**GUESTS PRESENT**

Paul Arlinghaus	Herb Higgins
Steve King	Neil Myers
Barb Simpson	Gary Haynes

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EST, on January 15, 2013 at The Garrison, Fort Harrison State Park, 6002 North Post Road, Ballroom, Indianapolis, Indiana. With the presence of ten members, he observed a quorum.

Thomas Easterly moved to approve the minutes for the meeting held on November 20, 2012. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

### **Election of Officers**

Doug Grant moved to re-elect for 2013 the same officers who served in 2012: Bryan Poynter, Chair; Jane Ann Stautz, Vice Chair; and Robert Carter, Secretary. Robert Wright seconded the motion. No other nominations were offered. Upon a voice vote, the motion carried.

### **Reports of the Director, Deputies Director, and Advisory Council**

Director Robert E. Carter, Jr., provided his report. He said the Department of Natural Resources is getting ready for the next legislative session. "This is budget year so it will be a long session, probably lasting until the end of April." Chris Smith is "currently meeting with legislators." The Director observed, "We're watching the bills come through. Some we support, some we play defense on. We just don't know until they all come through."

Carter said DNR is "moving swiftly" with the Bicentennial Nature Trust project. Mark Beck, who previously worked for Governor Mitch Daniels, is now the DNR Coordinator for the Bicentennial Nature Trust. Nick Heinzelman is "still heavily involved with the Nature Trust". The Director said he met with Governor Mike Pence, and the Governor is "very supportive of the Nature Trust and excited about the Bicentennial." Governor Pence is also supportive of the DNR and the State Parks. The Governor is "an Indiana sportsman. I'm real excited to be working for him."

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. He said the Fish and Wildlife Conservation Committee discussed the need for license fee increases. The basic structure of what would be presented to the Commission is an increase for license fees that would be in a "modest number of dollars", and DNR would explain the needs. The total yearly revenue for license fees is approximately \$20 million. Of that, \$12 million helps support for the Division of Law Enforcement and \$8 million helps support the Division of Fish and Wildlife. The last fee increase was approximately eight years ago. Davis said he wanted to give the Commission members a "heads up" concerning the meeting with the FWCC and the discussion concerning license fee increases. He asked Mark Reiter of Division of Fish and Wildlife if there had been any public discourse since the meeting.

Mark Reiter replied, "I've not heard any."

Davis said a fee increase would not be by rule. But the increase but would by Commission action as prescribed by Indiana statute.

Ron McAhron, Deputy Director for the Bureau of Water and Resource Regulation, was not present.

Patrick Early provided a report on behalf of the Advisory Council. He said the Advisory Council “has been in limbo for the past six to eight months” since the 2012 Indiana General Assembly reduced its membership from twelve to seven. Governor Daniels recently appointed all seven members. With the reduced membership and with new appointments he believed, “We will not have the issues we had with a quorum.” In addition to him, Early said the current members are Ross Williams, AmyMarie Travis, Bill Freeman, the Honorable Thomas Johnson, John Harriman, and Thomas Hastings. The Advisory Council would reconvene in February.

Early said the Advisory Council “vents topics before they come before the Commission.” The Advisory Council can “decipher possible issues in advance and draw a plan of action prior to preliminarily rule adoption and for other topics of importance to the DNR, the Commission, and our citizens.” He said he believed the Advisory Council has “historically served a valuable role,” and the “smaller membership should better serve the overall process.”

The Chair reflected, “I’m glad because I know that it does play a valuable role. I’m glad to see that that all was put back in place, and that it’s fully seated.”

## **CHAIR AND VICE CHAIR**

### **Updates on Commission and Committee activities**

Chairman Poynter reported, “As historically we do staff review this time of the year, I cannot say enough of the quality of each and every member of our staff. There should be no surprise there were high regards for their service and for what they do for us.” He added that he was completely personnel reviews immediately after the meeting.

The Chair commended the Commission’s AOPA Committee and its Chair, Jane Ann Stautz. “I can’t say enough about what you’ve done as Chair of the AOPA Committee, with Mark Ahearn who served very faithfully and with high regard from me and everybody else that serves on the AOPA Committee.” He addressed Stautz and said, “My hope is that you will continue to serve as Chair of the AOPA Committee.”

Jane Ann Stautz responded, “I would be glad to continue to serve as Chair of the AOPA Committee. We had a number of matters before us in 2012. As we’re looking at the start of 2013, there are pending ones for which we will be scheduling an AOPA Committee meeting in February to address.” She said Mark Ahearn is leaving INDOT to serve as General Counsel to Governor Pence. Upon Ahearn’s recommendation, we’re asking Jennifer Jansen, an experienced INDOT attorney, to serve. Stautz said Steve Lucas had an opportunity to talk with Jansen regarding the position. “We’re also hopeful that current members, Doug Grant, Robert Wright and R. T. Green, would continue to serve on the AOPA Committee.”

Chairman Poynter commented, “Thanks for all you do, and we look forward to hearing more as it develops. I know you have critical pending business.”

## **DNR, EXECUTIVE OFFICE**

### **Consideration and identification of any topic appropriate for referral to the Advisory Council**

John Davis reported the proposed fish and wildlife license fee increases would be presented to the Advisory Council.

## **PERSONNEL ITEMS**

### **Introduction of Matt O'Neill, Assistant Property Manager at Crosley Fish and Wildlife Area, and of Dan Eckstein, Assistant Property Manager at Sugar Ridge Fish and Wildlife Area.**

James Kershaw introduced new assistant property managers Matt O'Neill and Dan Eckstein. The Chair welcomed them and said the Commission would look forward to their future successes.

### **Introduction of new Assistant Property Manager at Versailles State Park**

Dan Bortner introduced Brad Walker as the new assistant property manager at Versailles State Park. Bryan Poynter thanked him for coming and expressed enthusiasm for his addition to leadership in the Division of State Parks and Reservoirs.

## **DIVISION OF NATURE PRESERVES**

### **Consideration of the dedication of an addition to the Manitou Island Nature Preserve in Fulton County**

John Bacone, Director of Division of Nature Preserves, presented this item. He said the first parcel of the Manitou Island wetlands was acquired in 1977. "Its high-quality wetlands are loaded with rare plants and animal species." He said the nature preserve is managed jointly by the Division of Fish and Wildlife and the Division of Nature Preserves. "This will end up with the whole high quality complex of wetlands in Lake Manitou being in public ownership." He recommended dedication of the addition to the Manitou Island Nature Preserve.

Phil French moved to approve dedication of the addition to the Manitou Island Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of the dedication of an addition to the Crooked Lake Nature Preserve in Whitley County**

John Bacone also presented this item. He said Crooked Lake is "the coldest and deepest lake in the State and supports a population of the rare cisco fish species. Over the years, DNR has been working with willing sellers to acquire as much of the forest and the wetland watershed as possible." He recommended dedication of the addition to the Crooked Lake Nature Preserve.

Donald Ruch moved to approve dedication of the addition to the Crooked Lake Nature Preserve as recommended. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

### **DNR, DIVISION OF LAW ENFORCEMENT**

Consideration of Commission resolution to the Governor and the State Budget Agency for a salary increase, under IC 14-9-8-28, in favor of Indiana Conservation Officers; Administrative Cause No. 13-013L

Colonel Scotty Wilson, Division of Law Enforcement, presented this item. He said that Indiana State Conservation Officers, Indiana State Police and Indiana State Excise Officers are all paid under the same 20-year salary matrix. With each year of service, there is a step in the matrix which provides a salary increase. During the 2010 national recession, salaries of law enforcement officers were frozen. He asked that the Commission approve the salary increases, according to the salary matrix adopted under IC 14-9-8-28, “to grant a catch-up increase to reflect their present years of service.”

Troy Woodruff asked Wilson if the officers “fall into the same category” as state employees when there is pay increase.

Col. Wilson responded that until 20 years of service, law enforcement officers receive a salary increase according to the salary matrix under IC 14-9-8-28. After 20 years of service, officers are eligible for an increase equal to the average increase received by all state employees.

The Chair thanked Woodruff for his presence as the designate for Commissioner Michael Cline.

Phil French asked Wilson if the Indiana State Police would be compensated according to the salary matrix. Col. Wilson answered that both Indiana State Police and State Excise Police have been approved for a salary increase according to the salary matrix.

Thomas Easterly asked whether state employees other than law enforcement officers had salary increases frozen in 2010. Col. Wilson responded they had.

Jane Ann Stautz moved adopt the resolution for salary increase as authorized by IC 14-9-8-28. Donald Ruch seconded the motion. Upon a voice vote, the motion carried. Thomas Easterly abstained.

### **DNR, DIVISION OF FISH AND WILDLIFE**

**Consideration for preliminary adoption of amendment to 312 IAC 5-6-9 to establish permanent special boating zones on Tippecanoe Lake and James Lake; Administrative Cause No. 12-098L**

The Chair reported this item was withdrawn.

**Information Item:** Update on Chronic Wasting Disease (“CWD”) Surveillance in Indiana

Mitch Marcus, Chief of the Wildlife Section for the Division of Fish and Wildlife, presented this item. He said CWD is a neurological disease found in deer, elk, and moose and affects both captive and free-ranging populations. CWD is currently present in 22 States and two Canadian Provinces. It is spread through (direct animal to animal) contact and indirect (soil to animal) contact. CWD is always fatal. “There is currently no evidence that CWD is transmittable to humans, though it is recommended humans not consume meat from a CWD positive animal.”

Although several CWD-positive States have attempted eradication of the disease, none have been successful. Wisconsin and Illinois are both CWD-positive states. Over the past five to six years, Wisconsin has spent over \$40 million on CWD response and management efforts, and Illinois spends about \$900,000 annually. Marcus provided the following website for current information on CWD: [www.cwd/info.org](http://www.cwd/info.org).

Chad Stewart, Deer Research Biologist in the Division of Fish and Wildlife, provided an update on the DNR’s CWD’s surveillance efforts. He said Indiana has been monitoring and sampling for CWD since 2002. Federal grants provided funding for previous surveillance efforts, but Federal funding ceased in 2012. DNR has since undertaken the cost to continue the monitoring program. “Currently, Indiana is ranking at a 95% confidence level that the disease does not exist, at a .1% prevalence rate, which calculates to one deer out of a thousand.”

Gary Haynes with the Board of Animal Health reported on an incident of CWD-exposed deer being shipped from Pennsylvania to Indiana. The DNR was notified of the shipment in October 2012. Through agency records, the DNR and the Board of Animal Health were able to determine which deer were moved into Indiana. As a result, four quarantine orders were issued.

The Chair asked Haynes if the deer from Pennsylvania are identified with an ear tag.

Haynes explained that deer are identified when entering Indiana. The CWD certification program requires identification. Some of the exposed deer from Pennsylvania escaped from a southern Indiana enclosure after a tree fell on a fence. An escaped deer that has not been recaptured was one of the exposed deer shipped from the Pennsylvania facility. The deer is identified with a yellow ear tag bearing “the number 47”. The landowner has been searching for the deer, and he has also signed an agreement for the “taking of the deer if located”. The animals remaining on the landowner’s property were not shipped from Pennsylvania, but the property remains under quarantine. The DNR and BOAH are monitoring the facility as the landowner searches for deer 47.

Chairman Poynter asked what measures were being taken to locate the deer.

Marcus responded that the DNR, Muscatatuck Fish and Wildlife Area staff, and local landowners are setting up trail cameras and bait stations to find the escaped yellow-tagged deer.

John Davis added that within days of being contacted by the Pennsylvania facility, a notice went out to farmers to kill any yellow-tagged deer within the identified area and to contact DNR.

Mark Reiter, Director of Division of Fish and Wildlife, said the landowner is also installing cameras and baiting the area. A nearby neighbor reported sighting a yellow-tagged deer “so we think it’s still around,” but the sighted deer may not be deer 47. The landowner was being cooperative and understands the necessity to destroy the rest of the herd if 47 deer is not located. BOAH and DNR are seeking funds to compensate the landowner if the rest of his herd needs to be destroyed. “If efforts to locate yellow-tagged deer 47 are unsuccessful by the first part of April, the landowner would need to consider euthanizing the rest of his deer herd.”

Davis commented, “I think it’s good for the Commission to recognize how Gary, Dr. Marsh, and BOAH have been very cooperative and have been great partners in this. We appreciate that.”

The Chair observed, “Ultimately, it’s how these deer get transferred and moved around. . . . Once we know they’re in a penned area, what’s the transportation? How are you involved with monitoring or regulating the transportation of these animals?”

Haynes replied, “The reason we know about the ones that came from Pennsylvania is we have a permitting system for imports.” BOAH rules provide that if a State tests positive for CWD within the past five years, no imports are allowed from that State. No additional deer can be transferred from Pennsylvania to Indiana. BOAH monitors inventories on facilities and movements into States.

Easterly asked Haynes how long CWD remains viable in soil.

Haynes responded that “currently there is no national standard answer to how long the CWD remains viable in soil.” If a site tests positive for CWD, it would be “a big question the agency would have to answer for that specific site.”

Marcus added, “It’s very persistent in the environment, and I’m not aware of any facility that’s been able to decontaminate.”

Phil French asked, “If yellow-tagged deer 47 is that big of an issue to economic impact, why wouldn’t there be a ‘special hunt’ allowed within a 10-mile radius of the area?”

Director Carter responded that, for the most part, Mitch Marcus and Conservation Officers have been relying on local hunters. “Our interest is the wild herd, because it has a \$200 million aggregate affect on our economy and State if our herd gets affected. If we get infected deer, it’s going to be a devastating issue here.”

Marcus added, “We do have a joint response plan drafted. The first draft was created in 2002 when we started our surveillance plan. It was updated in 2007 and is now being updated again. Once that’s finalized, we’d be happy to share it with you, as far as what steps we would take if we get a positive” test result.

Doug Grant asked if the goal was to try and kill all the deer within the ten-mile area of the escaped deer.

The Chair replied, “No, only the ones that have escaped.”

Jane Stautz reflected, “Again, we appreciate the cooperative efforts to track it down.” She asked if DNR felt confident that sufficient funds were available for a monitoring program, and if there was a need for additional contingencies to support the program. “I think the other piece is education, and the need for increased emphasis and awareness. I think a lot of the deer hunters are well aware, because a lot of them historically have hunted in other States as well, and their hunts and ability have been impacted, but now to bring it home to Indiana, I’m not sure that everyone here may be as aware of the consequences and impact to them as the deer hunters or folks that are related to the industry itself. Third would be with regard to security of the contained facilities, and any efforts or increased emphasis or communication with regard to the need for increased security or monitoring around those facilities, especially if they’re bringing them in.”

Carter answered that there is no funding. “We have to suck it up with internal funds, and it’s typically money that sportsmen give us. They’re ones that are paying for all this stuff. The movement [of deer] is done by humans.... We can prove the disease is spread by humans.”

Troy Woodruff inquired, “In representing INDOT, how would we know, other than me just now hearing this, if a deer was hit out on a road and our guys just went and hauled it off, that they should [be concerned] whether that ear tag was on there or not?”

Davis replied, “I don’t know if we made any district contact for the guys that pick up.”

Carter commented, “We need to send out communication pretty quick.”

Marcus said, “I would think that our local staff would be talking. We’ve got our District Biologist, Chad [Stewart], conservation officers, and all the BOAH that’s around. But, I can’t speak to whether we’ve specifically talked to” INDOT.

Davis added, “We will confirm that we do now.”

The Chair commented, “I think this is a great discussion.” He thanked all who provided the update on issues dealing with CWD. “This is a humongous issue, especially to those that are consumers and concerned about this.”

Donald Ruch said, “I have a question in relation to the third point that Jane brought up. Obviously, quite a bit of money has already been spent in trying to find this one particular deer. Does anybody know how they escaped?”

Haynes explained “a tree fell on the fenced area allowing the animals to escape before the landowner could fix the fence.” The landowner was able retrieve some of the animals.



French asked how long the fence was down before the landowner was aware of it.

Haynes answered, “I don’t know that off the top of my head. We might have that information, but I don’t have it here today.”

French again questioned whether the DNR could issue a special permit to try and capture the deer.

Davis replied, “There’s no question that we’d be doing it out of deer research.”

Marcus said the landowner has given consent to take the yellow tag deer 47. Communications have gone out to surrounding neighbors and others who might see the tagged deer.

The Chair concluded, “I do appreciate this item on the agenda and know of its importance and know that it’s complicated and appreciate everybody’s efforts.”

### **NRC, DIVISION OF HEARINGS**

#### **Consideration of report of rule processing, consideration of public comments, analysis and recommendation regarding final adoption of amendments to rules governing hunting and fishing 312 IAC 9; LSA Document #12-403(F); Administrative Cause No. 12-071D**

Sandra Jensen, Hearing Officer, presented this item. She explained the rule package would amend 312 IAC 9 regarding fish and wildlife issues. Jensen said that generally the rule amendments related to the chasing of wild animals, management of birds, fishing, mussels, hunting permits for people with disabilities. The Commission granted preliminary adoption of the rule amendments on May 15, 2012. As required by the previous Executive Order, fiscal analyses of the rule proposal were submitted to the Office of Management and Budget. Because there were fiscal impacts to small businesses, the Indiana Economic Development Commission was also tasked with the review of the fiscal analysis. She said the Office of Management and Budget as well as the IEDC responded favorably and offered no alternative suggestions with respect to the proposed rules.

Jensen said a public hearing was held on December 6, 2012. The period for public comments was open from May 2012 to December 6, 2012.

Jensen stated a number of comments were received after close of comment period. These comments were maintained, but in accordance with the Commission’s nonrule policy regarding comments on rule adoptions, they were not included in the report or considered in the analysis. Most of those comments were very similar to those submitted timely, and most related to bow-fishing at 312-IAC 9-7-2.

Jensen described two primary public concerns. One concern was that the rule amendments, as proposed, would limit bowfishing on eight listed rivers and streams that presently allow bow-fishing anytime, day or night because the proposal would allow bow-fishing on any stream only between sunrise and sunset. Another concern was that bowfishing should be allowed on all

rivers and streams at any time, and even the smaller streams should not be restricted to bow-fishing during the daylight hours only. After consideration of the public comments, the Department concurred with them and suggested a revision to language at subsection 312 IAC 9-7-2(p) that would allow bow-fishing on all rivers and streams at any time of the day or the night.

Jensen said that another comment addressed proposed rule amendments at 312 IAC 9-6-6(6) in regard to fishing in the area of the sea lamprey control barrier located on Trail Creek in Michigan City. The comment suggested that the rule language should mirror the temporary rule language adopted by Director Carter. After comparing the proposed rule language with the temporary rule language, the Department agreed that language of the temporary rule more appropriately addressed the issues. With these revisions at 312 IAC 9-6-6(6) and 312 IAC 9-7-2(p), Jensen recommended final adoption of the proposed amendments.

Jane Ann Stautz indicated she was in support of the proposed changes and of the Department's responses to the comments. She noted, however, that the amended subsection (p), which allows the use of bow-fishing equipment in any river and stream would seem to now conflict with subsection (j), which prohibits an individual from possessing bow-fishing equipment in or adjacent to specified streams. Stautz suggested further amending subsection (p) to include language that bow-fishing equipment can be possessed "anywhere except those rivers in listed in subsection (j). Somehow you're going to have to adjust that, because I think it's inconsistent."

Stautz then moved to approve for final adoption the rule amendments as recommended by the hearing officer, with additional amendments to 312 IAC 9-7-2(p) as she outlined. Donald Ruch seconded the motion. Upon a voice vote, the motion carried. Tom Easterly abstained.

**Consideration of report of rule processing, public hearing, written comments, and Hearing Officers analyses, and recommendation regarding final adoption of amendments to 312 IAC 18-3-14, adding area to the gypsy moth quarantine area; LSA Document #12-514(F); Administrative Cause No. 11-056E**

Stephen Lucas, Hearing Officer, presented this item. "First of all, I will echo Sandra Jensen's comment with respect to the final rule adoption. If the Commission's will is to have this given final adoption, we will have discussions with the Administration before moving it forward, based upon the new Executive Order."

Lucas said the proposed rule amendments would make permanent a temporary rule which includes LaPorte County and St. Joseph County among the list of counties in northern Indiana that are subject to the gypsy moth quarantine. Based in part upon the temporary rule, a parallel Federal regulation limits the geographic scope of its quarantine to LaPorte County, St. Joseph County, and seven other counties in Northern Indiana. "Part of that is the relationship between the State Government and the Federal Government." APHIS can quarantine less than an entire State if the State is attempting to control or slow the spread of gypsy moth within a smaller geographic area. He recommended the amendments for final adoption as published.

Thomas Easterly asked if the effect of the rule was actually to reduce the geographic scope of the Federal regulation and gypsy moth quarantine in Indiana. Lucas answered the decision whether

to expand the Federal regulation rested ultimately with APHIS. But failure to include LaPorte County and St. Joseph County within the rule would put Indiana in jeopardy of having the entire State quarantined by the Federal Government.

Tom Easterly moved to give final adoption to rule amendments adding LaPorte County and St. Joseph County to the gypsy moth quarantine area. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

**Consideration of approval of process to update records retention schedules for the Natural Resources Commission including the Division of Hearings and the AOPA Committee; Administrative Cause No. 12-101A**

Sandra Jensen, Administrative Law Judge, presented this item. Jensen stated for consideration was an internal update and modernization of the Commission's Division of Hearings record retention policy. The Indiana Commission on Public Records ("ICPR") has the primary responsibility to maintain all public records within state agencies. The review was precipitated by new electronic records policies by the ICPR. Most of the general policies applicable to agencies are also applicable to Division of Hearings, but the Commission has some records that are specialized. These include mediation files and may need a specific retention schedule. The Division of Hearings would consult with ICPR and may recommend specific retention schedules for the Division's adjudicatory records, mediation records, and records related to public hearings. A proposed retention schedule would be drafted and brought back before the Commission for approval. The retention schedule would ultimately need ICPR approval.

Lucas reflected that the Division of Hearings welcomed any feedback the Commission members might have on its retention schedule. As the Commission's Division, the schedule would be the Commission's schedule. Also, special elements could apply to the Commission's AOPA Committee. The Division was not now looking for commitment on the particulars of a schedule and would bring back a draft document for Commission approval and submission to ICPR.

Thomas Easterly moved for the approval of the suggested process to update records retention schedules for the Natural Resources Commission, including the Division of Hearings and the AOPA Committee. Patrick Early seconded the motion. Upon a voice vote, the motion carried. Rob Carter abstained.

**Adjournment**

The meeting was adjourned at approximately 11:33 a.m., EST.

**Next Scheduled Meeting:**

March 19, 2013 (10:00 a.m., EDT (9:00 a.m., CDT), Ballroom, The Garrison, Fort Harrison State Park, Indianapolis